

## **PUBLIC MEETING MINUTES**

February 5, 2009

PUBLIC EMPLOYMENT RELATIONS BOARD  
1031 18th Street  
Sacramento, CA 95811

Chair Neuwald called the meeting to order at 10:00 a.m.

### **Members Present**

Karen L. Neuwald, Chair  
Sally M. McKeag, Member  
Robin W. Wesley, Member  
Tiffany Rystrom, Member  
Alice Dowdin Calvillo, Member

### **Staff Present**

Tami Bogert, General Counsel  
Les Chisholm, Division Chief, Office of the General Counsel  
Bernard McMonigle, Chief Administrative Law Judge  
Eileen Potter, Chief Administrative Officer

### **Call to Order**

Chair Neuwald called the Board to order for a return to the open session of the December 11, 2008 Board meeting. She reported that the Board met in continuous closed session to deliberate on pending cases on the Board's docket, pending requests for injunctive relief, and pending litigation, as appropriate.

Since that open session in December, the Board has issued PERB Decision Nos. 1982a, 1992-H, 1993, 1994-M, 1995-H, 1996-M, 1997-S, 1998-M, 1999, 2000, 2001-M, 2002 and 2003. In Request for Injunctive Relief No. 563 (International Union of Operating Engineers, Unit 12 v. State of California (Department of Personnel Administration)), the request was denied. A document containing a listing of the aforementioned decisions was made available at today's meeting.

**Motion:** Motion by Member Wesley and seconded by Member McKeag to close the December 11, 2008 public meeting.

**Ayes:** Neuwald, McKeag, Wesley, Rystrom, and Dowdin Calvillo.

**Motion Carried.**

Chair Neuwald opened the meeting of February 5, 2009, and Member Wesley led in the Pledge of Allegiance to the Flag.

Member Wesley with pleasure introduced her Legal Adviser, Linda Kelly. Member Wesley stated that Ms. Kelly is a very experienced labor law attorney with 15 years experience in the practice of law. Ms. Kelly brings to PERB a balance of experience serving as both counsel for unions (California Union of Safety Employees and the California Correctional Peace Officers Association) and management (State of California Department of Personnel Administration).

### **Minutes**

**Motion:** Motion by Member Dowdin Calvillo and seconded by Member Rystrom that the Board adopt the minutes of the Public Meeting of PERB for December 11, 2008.

**Ayes:** Neuwald, McKeag, Wesley, Rystrom, and Dowdin Calvillo.

**Motion Carried.**

### **Comments From Public Participants**

None.

### **Staff Reports**

#### **a. Administrative Report**

Eileen Potter, Chief Administrative Officer, reported on two matters. She reported that the relocation of PERB's Los Angeles Regional Office (LARO) to its new location in Glendale is in the final stages. The date set for the move is Saturday, February 28, with a return to uninterrupted business that following Monday, March 2. Ms. Potter stated that this has been a long and challenging process beginning in April 2005.

Ms. Potter then reported on the State employee mandatory furlough, with the first furlough scheduled to begin this Friday, February 6. She stated that a news item with this information would be posted on the PERB website and signs would be posted on the door at each PERB Regional Office.

Chair Neuwald again expressed her appreciation to all PERB staff for their perseverance and contributions in the LARO relocation process.

#### **b. Legal Report**

General Counsel Tami Bogert reported that the case processing and litigation reports had been distributed to the Board for its review. She highlighted information from those reports, specifically since the last public meeting in December. With regard to monthly activities in case processing, Ms. Bogert reported that during the months of December and January, 131 new cases were filed, 182 case investigations were completed, and a total of 56 informal settlement conferences were conducted by staff. Case processing activities include investigations and staff disposition of PERB cases (cases in this context primarily involve unfair practice charges, representation matters, impasse-related requests, and compliance assignments). Also during this same two-month period, four requests for

injunctive relief were filed and completed as follows: one was withdrawn by the charging party, and three were considered and denied by the Board.

As requested by Member Rystrom at PERB's last public meeting, Ms. Bogert reported on year-to-date comparisons in case processing. She stated that the number of cases this fiscal year has increased by 46 cases (said another way, there were 637 new cases this fiscal year compared to 591 last year during this same period). (Cases include unfair practice charges, representation matters, impasse-related requests, and compliance assignments.) She reported that PERB has also experienced an increase by 51 solely in the number of unfair practice charges filed already this fiscal year compared to this same period last year (said another way, 500 new charges filed this year compared to 449 filed last year).

With regard to litigation, Ms. Bogert reported on several items. She first reported that during December and January four new appellate litigation cases were opened. Those four cases involve PERB decisions and were brought by the Rio City Teachers Association, Annette Deglow, the City of Burbank, and the Amalgamated Transit Union Local 1704, respectively. Ms. Bogert stated that although just opened, at the Rio City Teachers Association's request, the Court of Appeal recently dismissed its case in its entirety. In the three remaining cases, PERB is preparing the administrative records to file with the respective courts within the next month. Briefing schedules in those three cases will thereafter be set, likely beginning in early spring. (*Rio City Teachers Association, CTA v. PERB*; *Rio School District*, California Court of Appeal, Second Appellate District (Division Six (Ventura)), Case No. B212815; *Annette Deglow v. PERB*; *Los Rios College Federation of Teachers, Local 2279*, California Court of Appeal, Third Appellate District, Case No. C060717; *City of Burbank v. PERB*; *Burbank Employees Association*, California Court of Appeal, Second Appellate District (Division Two (Los Angeles)), Case No. B212945; *Amalgamated Transit Union Local 1704 v. PERB*; *Omnitrans*, California Court of Appeal, Fourth Appellate District (Division Two (Riverside)), Case No. E047450.)

Ms. Bogert reported on a litigation matter that pertains to the Fourth District Court of Appeal's published opinion in the *Journey Charter School* case. Although time has not yet expired, no party in that case has sought rehearing from the Court of Appeal and, to date, no petition for review or request for depublication has been filed with the California Supreme Court. (*California Teachers Association v. PERB*; *Journey Charter School*, California Supreme Court Case No. S170608, California Court of Appeal, Fourth Appellate District (Division Three (Santa Ana)), Case No. G040106.)

Ms. Bogert concluded her report on litigation stating that the Sixth District Court of Appeal, after completion of briefing and without oral argument, denied the writ petition brought by Joseph Doherty and James O'Neil regarding PERB Decision No. 1928. A response from the California Supreme Court is pending regarding Doherty's and O'Neil's appeal in this case. (*Joseph Doherty et al. v. PERB*; *San Jose/Evergreen Community College District*, California Supreme Court Case No. S169780, California Court of Appeal, Sixth Appellate District, Case No. H032365.)

Member Rystrom thanked Ms. Bogert for the year-to-date comparisons stating she found the information very helpful.

Chair Neuwald wanted to know if there was a timeframe within which the *San Leandro* case might be considered by the court.

Ms. Bogert responded that although PERB is not a party, *San Leandro* is a case that PERB is watching as it pertains to a mailbox access issue. She stated that briefing has been completed in this matter, but oral argument has not yet been set by the California Supreme Court. Once oral argument occurs and/or the case is submitted, the 90-day timeframe for the Court to issue its decision begins. (*San Leandro Teachers Association et al. v. San Leandro Unified School District et al.*, California Supreme Court Case No. S156961, California Court of Appeal, First Appellate District, Case No. A114679, Alameda County Superior Court, Case No. RG05235795.)

Chief Administrative Law Judge Bernard McMonigle reported that this fiscal year, just as with the General Counsel's Office, the caseload in the Division of Administrative Law has continued to grow. He stated that at the beginning of this fiscal year, 31 cases were assigned for formal hearing; to date, the division has 61 cases assigned. Mr. McMonigle reported that in Fiscal Year 2007-2008 a total of 83 cases were assigned for formal hearing compared to 93 cases which have been assigned so far this fiscal year. He stated that due to the division's increased caseload, the administrative law judges are unable to assist the General Counsel's Office with informal settlement conferences, which results in an increased workload for that office. Mr. McMonigle concluded that in January the General Counsel's Office issued 33 complaints, and it is anticipated that approximately half of those complaints will proceed to formal hearing. With that, he stated, the growth in caseload for the division is expected to continue.

Member Rystrom asked for an update on the caseload at LARO and inquired about the innovative ideas discussed at the last public meeting.

Mr. McMonigle stated that in the Oakland and Sacramento Regional Offices formal hearings are being scheduled within 90-120 days of the informal settlement conference. Due to the inability to have Sacramento and Oakland ALJs travel to assist in the LARO caseload, scheduling for formal hearings in LARO is approximately 150 days.

Mr. McMonigle then responded that in the transfer of cases method previously discussed, a hearing presided over by ALJ Ann Weinman in the LARO has been transferred to ALJ Donn Ginoza in PERB's Oakland Regional Office for decision writing. This transfer of cases to the Oakland or Sacramento Regional Office is expected to continue in the coming months after the hearings are held and completed at LARO and the cases are ultimately submitted for decision writing.

c. Legislative Report

Les Chisholm, Division Chief, Office of the General Counsel, stated that there was nothing to report with regard to legislation at this time.

**Motion:** Motion by Member McKeag and seconded by Member Dowdin Calvillo that the Administrative, Legal (including General Counsel and Chief Administrative Law Judge), and Legislative Reports be received.

**Ayes:** Neuwald, McKeag, Wesley, Rystrom, and Dowdin Calvillo.

**Motion Carried.**

### **Old Business**

None.

### **New Business**

None.

### **General Discussion**

There being no further business, the meeting is recessed to continuous closed session.

The Board will meet in continuous closed session each business day beginning immediately upon the recess of the open portion of this meeting through April 2, 2009 when the Board will reconvene in Room 103, Headquarters Office of the Public Employment Relations Board. The purpose of these closed sessions will be to deliberate on cases listed on the Board's Docket (Gov. code sec. 11126(c)(3)), personnel (Gov. Code sec. 11126(a)), pending litigation (Gov. Code sec. 11126(e)(1)), and any pending requests for injunctive relief (Gov. Code sec. 11126(e)(2)(c)).

**Motion:** Motion by Member Rystrom and seconded by Member Wesley that there being no further business, the meeting be recessed to continuous closed session.

**Ayes:** Neuwald, McKeag, Wesley, Rystrom, and Dowdin Calvillo.

**Motion Carried.**

Respectfully submitted,

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Regina Keith, Administrative Assistant

APPROVED AT THE PUBLIC MEETING OF:

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Tiffany Rystrom, Chair